Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

JOHN M. EDENFIELD and
JAMES C. EDENFIELD,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

JOHN R. MARTIN
MARTIN BROTHERS, P.C.
44 Broad Street, N.W.
500 Grant Building
Atlanta, GA 30303
(404) 522-0400

Counsel for Petitioners

QUESTIONS PRESENTED FOR REVIEW

I.

WHETHER IN JUDGING A GOVERNMENT MISCONDUCT CLAIM UNDER THE DUE PROCESS CLAUSE THE IMPROPER MOTIVATION OF GOVERNMENT AGENTS IN PURSUING A POTENTIAL TARGET, HERE POLITICAL REVENGE BY A SHERIFF AGAINST AN IMPORTANT SUPPORTER OF HIS OPPONENT IN A RECENT ELECTION, IS IRRELEVANT.

II.

WHETHER IN JUDGING A GOVERNMENT MISCONDUCT CLAIM UNDER THE DUE PROCESS CLAUSE THE DEGREE OF SUSPECTED CRIMINAL INVOLVEMENT BY THE TARGETS OF THE INVESTIGATION IS IRRELEVANT; I.E. WHETHER THE SAME LAW ENFORCEMENT CONDUCT IS PERMISSIBLE WITH RESPECT TO ALL "DISTRIBUTORS" OF COCAINE, WHETHER THEY BE "HARD CORE" PROFESSIONAL DISTRIBUTORS FOR PROFIT OR "SOCIAL" DISTRIBUTORS WHO MERELY SHARE COCAINE WITH FRIENDS OR "DISTRIBUTE" SMALL QUANTITIES TO FRIENDS FOR COST.

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The Petitioners, **JOHN M. EDENFIELD** and **JAMES C. EDENFIELD**, respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Eleventh

Circuit, entered in the above entitled proceeding on July 14, 1993.

OPINIONS BELOW

The decision of the United States District Court for the Northern District of Georgia dismissing the indictment against Petitioners on due process grounds is not reported. The decision of the Court of Appeals for the Eleventh Circuit reversing and vacating the decision of the District Court for the Northern District of Georgia is reported at 995 F.2d 197 (11th Cir. 1993). Both opinions are set forth in the appendix hereto.

JURISDICTION

On May 26, 1992, the District Court for the Northern District of Georgia

dismissed the indictment against the Petitioners John M. Edenfield and James C. Edenfield due to law enforcement misconduct in violation of the Due Process Clause. The United States appealed to the Eleventh Circuit Court of Appeals, pursuant to 18 U.S.C. §3731. On July 17, 1993, the Eleventh Circuit reversed the District Court. On March 28, 1994, the Eleventh Circuit denied a timely filed petition for rehearing and suggestion for rehearing en banc. This Court has jurisdiction to review the decision of the Eleventh Circuit under 28 U.S.C. §1254(1).

RELEVANT CONSTITUTIONAL PROVISION

Fifth Amendment to the United States Constitution.:

"No person shall be held to answer

for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall he be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

STATEMENT OF THE CASE

(A) Course of Proceedings and Disposition in the Courts Below

Petitioners John M. Edenfield and James C. Edenfield (hereinafter also referred to as "Defendants" or "John

Edenfield" or "James ("Jim") Edenfield") were charged by the United States in a four count indictment with conspiracy and possession with intent to distribute cocaine under 21 U.S.C. §§841(a)(1) and 846. (R1:1; R2:1) To this indictment they pled not guilty. (R1:3; R2:4).

The Defendants filed timely motions to dismiss the indictment under the Due Process Clause because of law enforcement misconduct in the investigation of their case. (R1:9, 34; R2:22, 34). Three days of testimony was heard and 53 exhibits received into evidence. (R3; R4; R5). The magistrate recommended that the motions be denied. (R1:58; R2:58). On May 26, 1992, District Court Judge Robert L. Vining, Jr., however, rejected the magistrate's recommendation and dismissed the indictment on due process grounds.

(R1:62; R2:62). Appendix Exhibit "A".

The Government appealed to the Court of Appeals for the Eleventh Circuit. (R1:66; R2:66). On July 14, 1993, a panel of the Eleventh Circuit granted the Government's appeal, vacating the District Court's order dismissing the indictment and remanding the case for further proceedings. United States v. Edenfield, 995 F.2d 197 (11th Cir. 1993). Appendix Exhibit "B". The Defendants filed a timely petition for rehearing and suggestion for rehearing en banc, which was denied on March 28, 1994. Appendix Exhibit "C". A stay of the mandate pending a petition for writ of certiorari to this Court was granted on May 16, 1994. Petitioners now file a timely petition for writ of certiorari.

(B) **Statement Of Facts Necessary to Argument Of The Issues**

The District Court found that in the summer and early fall of 1989, Merrill Greathouse, Sheriff of Upson County, Georgia, and other law enforcement officials, believed that the Edenfields, who are fraternal twins, were recreational users of cocaine who had made relatively small purchases and who on occasion gave cocaine to friends or sold small amounts (a gram or less) at cost. It was known that the Edenfields were not drug traffickers for profit. (R1:62:2,19; R2:62:2,19).

In 1988, Sheriff Greathouse had stood for re-election in largely rural Upson County. John Edenfield, Sr., the father of the Defendants, had been a previous supporter of Sheriff Greathouse, but there had been an angry "falling out"

over what John Edenfield, Sr. thought, rightfully, was an unwarranted and baseless investigation of a loyal employee. John Edenfield, Sr. became a supporter of Sheriff Greathouse's opponent, who lost to Sheriff Greathouse in an acrimonious and close election.

The District Court found that the subsequent investigation of the Edenfields in 1989 by Sheriff Greathouse and others to implicate the Edenfields in a cocaine trafficking charge under Georgia law was motivated by political and personal revenge by Sheriff Greathouse against the Edenfields due to the political opposition of the Edenfields to Sheriff Greathouse during the re-election campaign. The Court specifically found that Sheriff Greathouse and others were seeking "to improperly employ their

significant power and resources to settle personal scores." (R1-62:3, 15; R2-62:3,15).

The District Court further found that in order to extract vengeance on the Edenfields, Sheriff Greathouse and others entered into a contingent fee arrangement with an informant, Tony Watson. Sheriff Greathouse promised Watson a sizable reward if he were able to lure or to engineer an Edenfield to be in sole possession of more than an ounce of cocaine. Possession of more than an ounce was critical, because under the Georgia drug trafficking statute, the possession of this amount or more requires a minimum term of imprisonment of 10 years and a $100,000 fine, without the possibility of probation. O.C.G.A. §16-13-31(a)(1)(A). No effort was made to

train or control the informant. He was never advised not to entrap the Defendants. Indeed, Sheriff Greathouse knew that the informant was often drunk and probably using cocaine himself while working undercover for the Sheriff. (R1-62:7-8, 15-17; R2-62:7-8, 15-17).

Finally, the District Court found that although law enforcement officials knew that the Edenfields were not drug traffickers for profit, they nevertheless endeavored to "get" an Edenfield in possession of an amount of cocaine sufficient to make a trafficking case under Georgia law. The agents arranged for their informant to purchase more than an ounce of cocaine on November 10, 1989, from a source unknown to Jim Edenfield, but arranged by the informant. The informant's ruse was that he wanted to

buy over half an ounce for himself in addition to what Jim Edenfield wanted to purchase so that more than an ounce would be obtained. Instead of keeping the packages separate, however, the informant gave all of the cocaine to Jim Edenfield for his transportation back to their homes in Upson County and formulated an excuse to exit the car so that Jim Edenfield would be by himself with over an ounce of cocaine at the time that the arrest signal was given. (R1-62:8-10, 17-20; R2-62:8-10, 17-20).

Prior to the November 10, 1989 incident, there had been at least 4 separate "controlled" buys of cocaine by the informant from the Edenfields.[1] On

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[1]Although the Court of Appeals incorrectly states that these were buys of "one-eighth ounce amounts of cocaine" (995 F.2d at 199), in fact only two of (continued...)

each of these occasions the investigating officers had clear evidence of the Edenfields' involvement in cocaine. However, no search warrant was executed, or arrest made, because the investigative agents were not content with a simple possession or a small distribution case against the Edenfields. Instead, they would be satisfied with no less than a trafficking charge, i.e. possession of more than an ounce, the contingent fee arrangement they had made with their informant. (R1-62:4-7, 16; R2-62:7, 16).

The District Court found that although no particular circumstance was controlling, the totality of the above actions constituted misconduct "so egregious as to offend principles of due

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[1](...continued)
the purchases were for that amount. The other two were significantly less.

process" and require dismissal. (R1-61:20; R2-62:20). This conclusion made it unnecessary for the Court to consider other evidence of misconduct marshalled by the Defendants, including efforts to prevent the defense from learning of the improper scheme of the investigating officers, destruction of evidence by law enforcement officials and perjury by law enforcement witnesses regarding their misconduct.

The District Court summarized its findings as follows:

> While no one factor is controlling in this matter the Court finds that given the political and personal interest of law enforcement officials involved in this case, the preselection of the investigatory target, the government's entering into a contingent fee agreement with an informant to get an Edenfield, and the over-involvement of the informant as an agent of the government in the planning

and execution of the crime charged, law enforcement misconduct in this case is so egregious as to offend principles of due process. The government whether state or federal, is supposed to be in the business of investigating and intercepting crime in order to punish and deter wrongdoers. The government may not initiate crimes. A sense of ordered justice does not allow for law enforcement activity which results in the preselection of a particular individual for investigation and which results in law enforcement agents acting to ensure that a more serious crime is committed by that targeted individual as a result of the investigation than would have been committed without the acts of the government. (R1-62:20; R2-62:20). (Appendix Exhibit "A", p. 20).

REASONS FOR GRANTING THE WRIT

A. Introduction

Petitioners recognize that due process challenges for outrageous government conduct are by their very nature fact-specific. What might be shocking to the "universal sense of justice", United States v. Russell, 411 U.S. 423, 432, 93 S.Ct. 1637, 1643, 36 L.Ed.2d 366 (1973), to one judge might not be similarly shocking to the same "universal sense of justice" of another. This point was never made more clearly than in this case, where the District Court was offended by the circumstances of the government investigation, while the Circuit Court, adopting the factual conclusions of the District Court, was unimpressed with the Petitioners' claims of outrageous misconduct.

Of course, resolution of fact-specific questions are not typically subject to Supreme Court review. However, here, in diminishing the significance of several of the factors of government misconduct found by the District Court, the Circuit Court applied questionable legal analyses contrary to Supreme Court authority or without legal precedent and of doubtful validity.

B. Political Motivation

THE CIRCUIT COURT ERRED AND MISAPPLIED SUPREME COURT AUTHORITY IN HOLDING THAT THE MOTIVATION OF GOVERNMENT AGENTS IN PURSUING A POTENTIAL TARGET, HERE POLITICAL REVENGE BY A SHERIFF AGAINST AN IMPORTANT SUPPORTER OF HIS OPPONENT IN A RECENT ELECTION, IS IRRELEVANT IN JUDGING THE "TOTALITY OF CIRCUMSTANCES" OF GOVERNMENT MISCONDUCT INVOLVED IN THE INVESTIGATION AND PROSECUTION OF A DEFENDANT.

The District Court clearly found that Sheriff Greathouse's intensive investigation of the Edenfields, including the engagement of Tony Watson as a contingently motivated informant to be paid only upon producing all of the evidence necessary to convict an Edenfield of trafficking in cocaine under Georgia law, was motivated by the desire to obtain political revenge against the Edenfields. This political and personal motivation was one of the "totality of

circumstances" emphasized by the District Court in finding a due process violation. As the District Court found, "While law enforcement should be given great flexibility in investigating crime, to maintain justice, fairness and decency in the criminal justice process, law enforcement officials cannot be allowed to improperly employ their significant power and resources to settle personal scores." (R1-62:15, 20; R2-62:15, 20). (Appendix Exhibit "A", p. 15)

The Circuit Court, however, found the political and personal motivations of Sheriff Greathouse to be "irrelevant", at least for "due process purposes." 995 F.2d at 200. (Appendix Exhibit "B"). Without citation to any authority in support of its position, the Circuit Court opined that due process claims deal

only with "outrageous misconduct" (emphasis in original) and "an officer's possible motive" is of no concern. 995 F.2d at 200. According to the Circuit Court, the motivation of law enforcement officers, no matter how inappropriate or contrary to principles of "fundamental fairness" uniformly accepted in a free society, should not even be considered in judging the "totality of the circumstances" involved in a law enforcement misconduct claim under the Due Process Clause.

Petitioners know of no case supporting the Circuit Court's position. No distinction between "conduct" and "motive", even if one can intelligently be drawn, has ever appeared in the case law regarding government misconduct claims. Courts are directed to consider the "totality of the circumstances" whatever

they may be, "with no single factor controlling". See, e.g., United States v. Tobias, 662 F.2d 381, 387 (5th Cir. 1981). Moreover, the ultimate question is whether the actions of the government violated "that 'fundamental fairness shocking to the universal sense of justice', mandated by the Due Process Clause." United States v. Russell, 411 U.S. 423, 431-432, 93 S.Ct. 1637, 1643, 36 L.Ed.2d 366 (1973); United States v. Rochin, 342 U.S. 165, 172, 72 S.Ct. 205, 209, 96 L.Ed.2d 183 (1952). Under this test both logic and intuition calls for consideration of all factors involved, including the nature of the officer's motives.

A typical citizen in judging whether or not government conduct shocked his or her "universal sense of justice" would

certainly not exclude the reasons behind the officers' conduct. Why should the courts? Afterall, the reason that we want to know whether or not the target of a contingent fee arrangement was "pre-selected" is for fear that improperly motivated law enforcement officials would target their guile and substantial resources to induce someone to commit a crime they would not otherwise commit. Moreover, in other contexts the motivation of investigators or prosecutors, particularly political motivations which are rightfully subject to careful scrutiny in a democratic society, are of paramount importance. Cf., United States v. Gordon, 817 F.2d 1538, 1541 (11th Cir. 1987)(Selective prosecution claim based upon prosecution motivated by a desire to punish "the principal political organiza-

tion representing blacks" with the assistance of the "rival white political organization."); United States v. Falk, 479 F.2d 616, 623 (7th Cir. 1973)(en banc)(Improper selective prosecution of vocal draft resister in order to punish him for his opposition to the Vietnam war); United States v. Steele, 461 F.2d 1148 (9th Cir. 1972)(Selective prosecution of participant in census resistance movement).

To exclude political motivations, no matter how inappropriate or dangerous to a free society, from any consideration in determining the "totality of the circumstances" in a due process challenge to a prosecution as somehow "irrelevant", as would the Circuit Court here, eliminates from the determination of such cases important evidence particularly relevant

to the interests at stake, namely the "universal sense of justice." This Court should therefore review this case by issuing a Writ of Certiorari to correct this mistake of the Eleventh Circuit.

C. Degree of Criminal Involvement

THE CIRCUIT COURT ERRED AND MISAPPLIED SUPREME COURT AUTHORITY IN HOLDING THAT IN JUDGING A GOVERNMENT MISCONDUCT CLAIM UNDER THE DUE PROCESS CLAUSE NO DISTINCTION SHOULD BE DRAWN WITH RESPECT TO THE DEGREE OF SUSPECTED CRIMINAL INVOLVEMENT BY THE TARGETS OF THE INVESTIGATION; I.E. WHETHER THE SAME CONDUCT IS PERMISSIBLE WITH RESPECT TO ALL "DISTRIBUTORS" OF COCAINE, WHETHER THEY BE "HARD CORE" PROFESSIONAL DISTRIBUTORS FOR PROFIT OR "SOCIAL" DISTRIBUTORS WHO MERELY SHARE COCAINE WITH FRIENDS OR "DISTRIBUTE" SMALL QUANTITIES TO FRIENDS FOR COST.

In Hampton v. United States, 425 U.S. 489, 96 S.Ct. 1646, 48 L.Ed.2d 113 (1976) this Court discussed the factors to be considered in a due process/fundamental fairness challenge to a criminal conviction based upon the outrageousness of police behavior. There, three members of the Court, Chief Justice

Burger, then Justice Rehnquist and Justice White, opined that due process principles would never prevent the conviction of a predisposed defendant regardless of the outrageousness of police conduct in investigating and prosecuting the case. Justices Powell and Blackmun concurred in the judgment of the Court upholding the convictions of the defendant, but, however, refused "to join the plurality in concluding that, no matter what the circumstances, neither due process principles nor our supervisory power would support a bar to conviction in any case where the Government is able to prove predisposition." 425 U.S. at 495, 96 S.Ct. at 1653. According to Justices Powell and Blackmun, although the cases would be "rare", a conviction would nevertheless be barred when police

conduct reaches "a demcnstrable level of outrageousness." 425 U.S. at 495 n.7, 96 S.Ct. at 1653 n.7. The three dissenters, Justice Brennen, Stewart and Marshall, agreed and found sufficient misconduct in Hampton to vacate the conviction.[2]

An important, and often overlooked, portion of the crucial concurring opinion of Justices Powell and Blackmun is the position advanced by the justices that the outrageousness of police conduct must be judged in relation to the "widely varying degrees of criminal involvement" of the individuals subject to police investigation. Using narcotics as an example, the justices noted that the

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[2]Justice Stevens took no part in the consideration or decision of the case.

"criminal involvement of pushers varies widely." On one end of the spectrum is the "hard core professional in the 'business' on a large scale and for years" and on the other end of the spectrum is "the high school youth whose 'pushing' is limited to a few of his classmates over a short span of time." Although in both situations the defendant is a predisposed "pusher", the obvious differences in the circumstances should be relevant in judging the outrageousness of the government conduct "relative to the circumstances." 425 U.S. at 494 fn 5, 96 S.Ct. at 1652 fn 5. What "fundamental fairness" and the "universal sense of justice" might countenance in the investigation of a suspect at one end of the continuum of "predisposed activity" might not be similarly acceptable for investi-

gation of a suspect at the other end of the continuum.

Here, the Circuit Court totally ignored these admonitions in the opinion of Justices Powell and Blackmun, critical to the majority in Hampton. The Circuit Court described the defendants as "long-time and admitted distributors", 995 F.2d at 201, as if all cocaine "distributors" are the same. The Edenfields, who the District Court found "were users of cocaine and would sometimes distribute cocaine to others in amounts of a gram or less, purely on a social basis" and never "for profit or in large amounts" (R1-62:2; R2-62:2), may not qualify as a "high-school youth" whose "pushing is limited to a few of his classmates over a short span of time," but their criminal involvement was much closer to the "high-

school youth" end of the spectrum than the "hard core professional" at the other end of the spectrum in the concurring opinion of Justices Powell and Blackmun.

The District Court in judging the totality of the circumstances of the law enforcement conduct in this case followed the directions of Justices Powell and Blackmun by considering the degree of the suspected criminal involvement of the Defendants in deciding the due process claim. The Circuit Court in determining the outrageousness of the law enforcement officials misconduct ignored the directions of this Court, lumped all "distributors" together, and failed to weigh the investigative techniques used against the seriousness of the suspected criminal involvement of the Defendants. This was a fundamental misapplication of binding

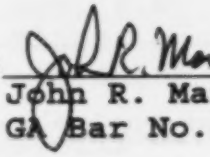
authority of the Supreme Court which should be corrected by this Court through granting the requested Writ of Certiorari.

CONCLUSION

The opinion of the Eleventh Circuit in this case carved out an important new evidentiary rule in government misconduct claims, namely that the motivation of law enforcement officers is in all cases irrelevant, which is not only without precedent but is illogical and unwise. This holding should be corrected. Similarly, in reaching its decision, the Eleventh Circuit refused to apply or misapplied the directions of this Court that the degree of the suspected criminal involvement of a defendant should be factored into the decision regarding the

outrageousness of the investigative techniques employed. Again, this erroneous conclusion by the Circuit Court should be corrected by this Court. For each of these reasons, and in combination, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,
MARTIN BROTHERS, P.C.

By: 
John R. Martin
GA Bar No. 473325

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500 Grant Building
Atlanta, GA 30303
(404) 522-0400

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PROOF OF SERVICE

I, **JOHN R. MARTIN**, do declare that on this date, June 7, 1994, pursuant to Supreme Court Rules 29.3 and 29.4, I have served the attached **PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT** on each party to the above proceeding, or that party's counsel, and on every other

person required to be served by depositing an envelope containing the above document in the United States mail properly addressed to each of them and with first-class postage prepaid.

The names and addressed of those served are as follows:

Mary Jane Stewart
Assistant United States Attorney
1800 Richard Russell Building
75 Spring Street, S.W.
Atlanta, GA 30303
Counsel for Respondent

Hon. Drew Days, III
Solicitor General
Main Justice Building, Room 5143
10th & Constitution
Washington, D.C. 20530
Counsel for Respondent

John M. Edenfield
James C. Edenfield
P.O. Box 1057
Thomaston, GA 30286
Petitioners

John R. Martin
Counsel for Petitioners